



1 On January 11, 2010, Petitioner filed a "Motion for: Relief from Judgment or Order"  
2 (Dkt. 44) which is now pending before the Court. Petitioner appears to be requesting that his  
3 habeas case be re-opened and that the merits of his claims be reconsidered. Petitioner argues  
4 that he is submitting "more thoroughly that the alleged constitutional violations [have]  
5 resulted in a miscarriage of justice to the extent it has resulted in the conviction and  
6 imprisonment of the petitioner who is innocent" (Dkt. 44 - Motion at 4). Petitioner's claim  
7 of actual innocence is discussed in the Report and Recommendation (Dkt. 33 at 14-15).  
8 Petitioner has not asserted grounds in his present motion that justify relief under Fed.R.Civ.P.  
9 60(b).

10 To the extent Petitioner is seeking leave to file a second or successive habeas  
11 application, 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive  
12 [habeas] application ... is filed in the district court, the applicant shall move in the appropriate  
13 court of appeals for an order authorizing the district court to consider the application."  
14 Petitioner therefore must file his application in the Ninth Circuit Court of Appeals. Petitioner  
15 will be provided with the appropriate form for filing an application for leave to file a second  
16 or successive petition. Petitioner's "Motion for: Relief from Judgment or Order" (Dkt. 44)  
17 will be denied without prejudice.

18 Accordingly,

19 **IT IS ORDERED** that Petitioner's "Motion for: Relief from Judgment or Order"  
20 (Dkt. 44) is denied without prejudice.

21 **IT IS FURTHER ORDERED** that the Clerk of Court shall provide Petitioner with  
22 the appropriate form for filing an Application for Leave to File Second or Successive Petition  
23 under 28 U.S.C. § 2254.

24 DATED this 17<sup>th</sup> day of June, 2010.

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27 Earl H. Carroll  
28 United States District Judge